

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON DIVISION TWO

STATE OF WASHINGTON,
Respondent,

NO. 53210-7-II

v.

Statement of Additional
Grounds For Review

MARK LUGLIANI,
Appellant.

FILED
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DIVISION II
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STATE OF WASHINGTON
DEPUTY CLERK

I, Mark Lugliani, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

I. FACTS

The State charged Mark Lugliani (Mr. Lugliani) by information with Child Molestation in the Third Degree, CP7. The State sought a sentence above the standard sentencing range pursuant to RCW 9A.535 (3)(c), in that Mr. Lugliani used his position of trust, confidence, or fiduciary responsibility to facilitate the commission of the offense.
Id.

Mr. Lugliani's offender score was a zero (0) and, therefore, his standard sentencing range was 6 to 12 months incarceration, plus 12 months of community custody, CP 51 at 2. The statutory maximum for Mr. Lugliani's offense was 60 months (Five YEARS). Id. Mr. Lugliani pled guilty as charged and stipulated to the aggravating factor. Id.; RP 6-12, 17-18.

Mr. Lugliani requested that the trial court impose a standard range sentence or a Special Sex Offender Sentencing Alternative (SSOSA). RP 22. The State opposed Mr. Lugliani's request for several reasons and requested an exceptional sentence of 48 months incarceration and 12 months community custody, RP 18-22. First, the State argued that Mr. Lugliani's case was not appropriate for the SSOSA. RP 19. The State reasoned that RCW 9A.4A.670 required an established relationship with or connection to the victim, such that the sole connection with the victim was not the commission of the crime. RP 18. And that Mr. Lugliani's case was one in which the defendant is a substitute teacher that had some connection with the victim through a teaching role, but that it was not an established relationship with this victim, RP 18-19.

Next, the State contended that a standard range sentence was inappropriate in Mr. Lugliani's case. RP 19. In support of its position, the State set forth details surrounding (1) Mr. Lugliani's conduct, RP 19-20; (2) the victim's vulnerability and Mr. Lugliani's larger stature, RP 20; and (3) that the victim had been traumatized by this event, RP 20-21.

Lastly, the State argued that Mr. Lugliani violated his position of trust with the victim and with the school. RP 21. In support of this position, the State simply reiterated the information set forth in the Department of Corrections (DOC) conclusion in its Presentence Investigation (PSI) report. RP 21; CP 55 at 11.

Mr. Lugliani's defense counsel argued against the State's request that the trial court impose an exceptional sentence. RP 22. Counsel argued that Mr. Lugliani had taken responsibility for his actions from the beginning, he met with investigators, he appeared in court, and he did not put the victim through an interview. RP 22-24. Instead, he candidly acknowledged the truth of the allegations and stipulated to the aggravating factor, RP 25-27.

Mr. Lugliani's counsel then addressed the PSI submitted by the DOC. RP 25. Counsel

argued that the PSI favored a SSOSA. RP 25-28. Mr. Lugliani's counsel also took exception to the State's argument and the PSI's information about victim vulnerability. RP 26. Counsel took exception to the PSI's section regarding criminal history as well. RP 27. Counsel argued that this information was inappropriate, should not be considered by the trial court, and that it violated the real facts doctrine. RP 26, 27.

Defense counsel also argued that there was no findings that Mr. Lugliani did not or ought not qualify for a SSOSA under RCW 9A.670(4). RP 28. Counsel explained that Mr. Lugliani's SSOSA evaluation established that he met all the specific factors under the statute. RP 29-36.

In considering its sentence, the trial court addressed Rmm's alleged vulnerability and smaller stature. RP 38-39. The trial court did not address any of RCW 9A.670(4)'s factors. Id. Instead, it denied Mr. Lugliani's request for a SSOSA, stating:

I can't in good conscience issue a special sex offender sentencing alternative here. That would -- that would trouble me to do that. I feel there are other purposes that need to be fulfilled here and I am going to -- ...

I'm gonna sentence you to forty-eight months in prison as I think that appropriately proportionate to the offense in light of the aggravator and that is all.

RP 39

Mr. Lugliani timely appeals the trial court's refusal of a SSOSA and its imposition of an exceptional sentence.

II. Standard of Review

A reviewing court will reverse a sentencing court's decision only if it identifies a clear abuse of discretion or misapplication of the law. State v. Porter, 133 Wn. 2d 177, 181 (1997) (citing State v. Elliott, 114 Wn. 2d 6, 17, cert. denied, 498 U.S. 838 (1990)). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds; this standard is also violated when a trial court makes a reasonable decision but applies the wrong legal standard or bases its ruling on an erroneous view of the law. State v. Dixon, 159 Wn. 2d 65, 76 (2006) (quoting State v. Rohrich, 149 Wn. 2d 647, 654 (2003)); State v. Hudson, 150 Wn. App. 646, 652 (2009). When we review whether a trial court applied an incorrect standard, we review de novo the choice of law and its application to the facts in the case. State v. Hancy, 125 Wn. App. 118, 123 (2005); State v. Welchel, 047 Wn. App. 813, 817 (1999), review denied, 140 Wn. 2d 1024 (2000); see State v. Carlyle, 84 Wn. App. 33, 35-36 (1996).

III. Argument

THE TRIAL COURT IMPOSED AN EXCEPTIONAL SENTENCE IN VIOLATION OF MR. LUGLIANI'S DUE PROCESS RIGHTS AND THE SRA

The federal due process clause applicable here provides, "No state shall ... deprive any person of life, liberty, or property, without due process of law," U.S. Const. amend XIV § 1; see also State v. Herzog, 112 Wn. 2d 419, 426 (1989) (interpreting Const. art. 1 § 3's due process clause the same as the federal due process clause absent any argument the state provision secured greater sentencing protection than the federal provision). A trial court denies due process if it imposes a sentence "so arbitrary or unfair" as to constitute an unlawful deprivation. State v. Handley, 115 Wn. 2d 275, 290 n. 4 (1990); Bearden v. Georgia, 461 U.S. 660, 666 n. 8 (1983). Here, the exceptional sentence imposed upon Mr. Lugliani, a first time offender, is just the type of arbitrary and unfair sentence that denies due process.

A. The trial court abused its discretion in denying Mr. Lugliani a SROSA.

In considering whether to impose a SROSA, the judge briefly discussed

Mr. Lugliani's status as a teacher and "position of trust" but then focused more on RMM's alleged vulnerability and stature. RP 38-39. The judge did not address any of the SSOSA factors under RCW 9A.607(4), RP 37-39. Instead, the judge simply stated:

I can't in good conscience issue a special sex offender sentencing alternative here. That would -- that would trouble me to do that, I feel there are other purposes that need to be fulfilled here...

I'm gonna sentence you to forty-eight months in prison as I think that appropriately proportionate to the offense in light of the aggravator and that is all.

RP 39.

Trial courts must generally impose sentences within the standard range. *State v. Osman*, 157 Wn.2d 474, 480 (2006). However, if an offender is eligible for and requests a SSOSA, the court must decide whether the alternative is appropriate. *Id.* at 480-81. In determining whether the SSOSA is appropriate, the trial court must consider several factors, including:

[W]hether the offender and the community will benefit from use of [SSOSA], ... whether the [SSOSA] is too lenient in light of the extent and circumstances of the offense, ... whether the offender has victims in addition to the victim of the offense, ... whether the offender is amenable to treatment, ... the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and ... the victim's opinion whether the offender should receive a treatment disposition.

RCW 9.94A.670(4). The decision to impose a SSOSA "is entirely within the trial court's discretion," State v. Onefrey, 119 Wn. 2d 572 (1992). A court abuses its discretion if it categorically refuses to impose a particular sentence or if it denies a sentencing request on an impermissible basis. State v. Khanteechit, 101 Wn. App. 137, 139 (2000)

Further, while trial courts have considerable discretion under the SRA, they are still required to act within its strictures and principles of due process of law. State v. Magly, 121 Wn. 2d 707, 712 (1993). Every

defendant is entitled to ask the trial court to consider a sentencing alternative and to have the alternative actually considered. State v. Garcia-Martinez, 88 Wn. App. 322, 330 (1997). Where a defendant has requested a sentencing alternative authorized by statute, the categorical refusal to consider the sentence or the refusal to consider it for a class of offenders, is effectively a failure to exercise discretion and is subject to reversal. Cf. Garcia-Martinez, 88 Wn. App. at 330.

In this case, the judge refused to impose a SSOSA, "in light of the aggravator and that is all," RP 39. In so doing the judge did not consider on the record any of the SSOSA factors as required under RCW 9A.607(4). RP 37-38. Moreover, although the judge was basing his refusal of a SSOSA on the position of trust aggravator, it is evident that Rmm's alleged vulnerability and smaller stature was the primary reason why the judge refused the SSOSA, RP 38-39. However, particular vulnerability was not an aggravator charged by the State or stipulated to by Mr. Lugliani and therefore, was not a factor properly before the trial court. RP 26. Under these circumstances, the trial court categorically refused to consider a SSOSA and denied Mr. Lugliani's request on an impermissible basis, and this is an abuse of discretion and reversible error.

9

To illustrate, in State v. Grayson, the sentencing court denied a request for a drug offender sentencing alternative (DOSA) "because of the fact that the State no longer has money available to treat people who go through a DOSA program." 154 Wn.2d 333, 337 (2005). On appeal, Grayson challenged the trial court's failure to seriously consider the alternative and reliance on facts outside the record. Id. at 338. The Supreme Court noted that the judge did not articulate any other reason for denying the DOSA despite the prosecutor's request for additional reasons. Id. at 342. Recognizing that "there were ample other grounds to find that Grayson was not a good candidate for DOSA," the Supreme Court determined that the trial court erred by categorically refusing a statutorily authorized sentencing alternative for an eligible offender. Id. at 342.

The trial court similarly erred in Mr. Lugliani's case by categorically refusing to consider a SSOSA. The trial court did not consider on the record any of the SSOSA factors as required by law. RP 37-38. Instead, it simply stated that it was imposing a 48 month sentence "in light of the aggravator," RP 39. And although the trial court stated that there were "other purposes that need to be fulfilled," it did not articulate what those purposes were. RP 39. Furthermore, although the trial court indicated that the abuse of trust aggravator was the basis for denying a SSOSA, it is evident that the trial court's actual reason for denying a SSOSA was particular vulnerability.

an aggravator not charged and properly before the court. RP 38-39. Indeed, the circumstances of Mr. Lugliani's case are much more compelling than those of Grayson's.

In sum, the trial court failed to meaningfully consider whether a SSOSA was appropriate for Mr. Lugliani, a first time and eligible offender. Further, particular vulnerability was an impermissible basis for denying Mr. Lugliani's request for a SSOSA. See generally Blakely v. Washington, 542 U.S. 296 (2004) (constitutional and statutory procedures protect defendants from being sentenced on the basis of untested facts); Grayson, 154 Wn. 2d at 339 ("Under SRA, where a defendant raises a timely and specific objection to sentencing facts, the court must either not consider the fact or hold an evidentiary hearing."). Accordingly, the trial court's denial of Mr. Lugliani's request for a SSOSA was an abuse of discretion and in violation of both due process and the SRA.

B. The trial court erred in imposing an exceptional sentence.

An exceptional sentence is subject to review as set forth in RCW 9A.04.085(4), which states:

To reverse a sentence which is outside the standard sentence range,

the reviewing court must find: (a) either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

Here, the trial court erred in imposing an exceptional sentence because the evidence does not support the abuse of trust aggravator, the trial court's reasons for imposing the exceptional sentence violated the real facts doctrine, and the exceptional sentence was clearly excessive.

1. The evidence does not support the abuse of trust aggravator.

An abuse of a position of trust is a valid aggravating factor to support an exceptional sentence in crimes relating to sexual assault, RCW 9A.4A.035 (3)(W); State v. Grewe, 117 Wn.2d 211, 216-217 (1991). The two relevant factors a sentencing court considers in determining whether a defendant violated a position of trust are "the duration and the degree of the relationship" between the perpetrator and the victim, *Id.* at 218. "A relationship extending over a longer period of time, or one within the same household, would

indicate a more substantial reason for imposing an exceptional sentence." *Id.* at 219 (quoting State v. Fisher, 108 Wn.2d 419, 427 (1987)).

Court's review findings of aggravator factors under the clearly erroneous standard. State v. Hale, 146 Wn. App. 299, 307 (2008). In applying the "clearly erroneous" standard in reviewing the fact finders reasons for imposing an exceptional sentence, courts reverse the findings only if substantial evidence does not support them, State v. Jeannotte, 133 Wn. 2d 847, 856 (1997). "Substantial evidence" is defined as "evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premises." Jeannotte, 133 Wn. 2d at 856 (internal quotation marks omitted) (quoting OLMSTEAD v. Dep't of Health, Med. Section, 61 Wn. App. 888, 893 (1991)).

In this case, the State presented no evidence of the duration and degree of the relationship between Mr. Lugliani and Rmm, - relevant factors of abuse of trust, RP 19-21. The only evidence specific to abuse of trust presented by the State was its reiteration of a section of the PSI report regarding Mr. Lugliani's role as a teacher, RP 21; CP 55 at 11. In fact, the State argued that there "was not an established relationship with this victim." RP 19. In the same vein,

the trial court discussed only Mr. Lugliani's role as a teacher, but it did not identify or discuss any evidence as to the degree and duration of Mr. Lugliani's and RMM's relationship, RP 38-39. The record also demonstrates that the trial court based the exceptional sentence on particular vulnerability and not abuse of a position of trust, RP 38-39. Consequently, the record is devoid of any evidence of the degree and duration of Mr. Lugliani's and RMM's relationship and therefore the evidence cannot support that Mr. Lugliani used his position as a teacher to facilitate the commission of the offense. Accordingly, imposition of the exceptional sentence was clearly erroneous. See State v. Vermillion, 66 Wn. App. 332, 347-48 (1992) ("The trial court's reasons, although supported by the records, do not justify an exceptional sentence based on abuse of trust.").

2. The trial court's reasons for imposing an exceptional sentence were not substantial and compelling because the trial court relied on facts constituting particular vulnerability, thus violating the real facts doctrine.

The real facts doctrine, RCW 9A.530(2), provides in part, "In determining any sentence other than a sentence above the standard range, the

trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537." Additionally, "[f]acts that establish the elements of a more serious crime or additional crimes may not be used to go outside the standard range except upon stipulation or when specifically provided for in RCW 9.94A.535(3)(d), (e), (g), and (h)." RCW 9.94A.530(3) To be entitled to raise a real facts doctrine issue on appeal, the defendant must demonstrate that he raised a "timely and specific objection" to the sentencing court's consideration of the allegedly improper information. Grayson, supra, 154 Wn.2d at 338-39.

In this case, the State recommended a forty-eight month exceptional sentence. RP 22. The State argued against a SSOA because there "was not an established relationship with this victim," RP-18-19. The State then argued that a standard range sentence was inappropriate given Mr. Lugliani's conduct, relying largely on RMM's vulnerability and physical stature. RP-19-21. Lastly, the State argued that Mr. Lugliani "violated his position of trust with the victim and his position of trust with the school." RP 21. But the State did not articulate how Mr. Lugliani violated that position of trust. *Id.* Instead, the State simply reiterated the conclusion regarding Mr. Lugliani's role as a teacher set forth in the DOC's PSI report. CP 53 at 11.

Mr. Lugliani's Counsel took exception to the State's commentary and evidence regarding "particular vulnerability." RP 26. Counsel also took exception to the PSI's section regarding "criminal history," which contained information about contacts with the police, and not convictions and proven cases. RP 27.

In imposing an exceptional and denying Mr. Lugliani's request for a SSOSA, the trial court stated, in relevant part:

The aggravator here regards the role Mr. Lugliani held as an educator.

Certainly, it's during school hours, he calls her out of class, it's a position of trust. On that position of trust issue, which is the core of the aggravator, it's really an arrogance of position, an entitlement that you can do what you want to this young lady without regard to physical disability. She's - she's, I infer, at least physically smaller, quite younger and importantly in your charge. You know, the notion that, you know, you're overcome by this urge at the moment, is really contrary to what society would expect from you, that as you grow older, you grow wiser, and in that wisdom is restraint. You frankly went the other way on that.

RP 38-39 (emphasis Added).

As is evident from the trial court's discussion, the exceptional sentence was based upon findings of RMM's vulnerability and physical stature, and not on any findings of abuse of trust. Indeed, although the trial court referenced position of trust, the court made no findings as to how this position of trust was violated - e.g., degree and duration of relationship. *Id.* The trial court merely found that "it's a position of trust" and an "arrogance of position." *Id.*

Additionally, it is plausible from the court's discussion that it also relied on Mr. Lugliani's previous contacts with the police in imposing the exceptional sentence. RP 27. The trial court stated that it had read the PSI in which this information was inappropriately included. RP 25, 27, 38.

Given the trial court's findings in this case, its reasons for imposing an exceptional sentence were not substantial and compelling because it relied on facts constituting particular vulnerability and, possibly, facts of previous police contacts and unproven cases that were inappropriately included in the PSI; thus violating the real facts doctrine and failing to give substantial and compelling reasons for imposing the exceptional sentence. See State v. Bluehorse, 159 Wn. App. 410, 431-33 (2011); State v. Morreira, 107 Wn. App. 450, 457-60 (2011).

3. Mr. Lugliani's exceptional sentence is clearly excessive because it violated the real facts doctrine and fails to comport with RCW 9A.010 purposes.

Appellate courts review a trial court's imposition of an exceptional sentence to determine if it is clearly excessive; if so, the sentence is the result of an abuse of discretion. *Hale*, *Supra*, 146 Wn. App. at 308. The trial court may exercise its discretion to determine the precise length of the exceptional sentence appropriate on a determination of substantial and compelling reasons supported by the court's aggravating factor finding. *State v. Kolesnik*, 148 Wn. App. 790, 805 (2008), review denied, 165 Wn. 2d 1050 (2009). "A 'clearly excessive' sentence is one that is clearly unreasonable, i.e., exercised on untenable grounds or for untenable reasons, or an action that no reasonable person would have taken." *Kolesnik*, 149 Wn. App. at 805 (internal quotation marks omitted) (quoting *State v. Ritchie*, 126 Wn. 2d 388, 393 (1995))

Here, the trial court failed to base its imposition of an exceptional sentence on substantial and compelling facts based on the abuse of trust aggravator. RP 38-39. Rather, the length of the exceptional sentence imposed was clearly based on facts of RMM's particular vulnerability and physical stature. *Id.* Mr. Lugliani's exceptional sentence therefore violates the real facts

doctrine since the State neither charged a particular vulnerability aggravator nor proved the abuse of trust aggravator, Bluehorse, 159 Wn. App. at 433-434,

Additionally, RCW 9.94A.010 provides:

The purpose of [the SRA] is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve himself or herself;
- (6) Make frugal use of the State's and local governments' resources; and
- (7) Reduce the risk of reoffending by offenders in the community.

"Whether a given presumptive sentence is clearly excessive in light of the purposes of the SRA is not a subjective determination dependent upon the individual sentencing philosophy of a given judge." State v. Hortman, 76 Wn. App. 454, 463 (1994). "Rather, it is an objective inquiry based on the Legislature's own stated purposes for the act." Id.

Here, the trial court correctly pointed out the SRA's purpose and RCW 9.94A.010, RP 37. But the trial court did nothing more. Id. The trial court simply mentioned the SRA's purposes and then moved on to Mr. Lugliani's sentence range and the aggravating factor. RP 37-39. Thus, the trial court did not meaningfully consider the SRA's stated purposes. RCW 9.94A.535. State v. Parker, 132 Wn. 2d 182, 187 n.6 (1997) (when imposing an exceptional sentence the court must consider [] the purposes of this Chapter.").

Arguably, where the trial court failed to meaningfully consider the SRA's stated purposes, Mr. Lugliani's exceptional sentence fails to comport with RCW 9.94A.010 and is clearly excessive in light of the SRA's stated purposes. Specifically, the exceptional sentence is not proportionate to the seriousness of the offense nor is it commensurate with the punishment imposed on others committing similar offenses to be sure, courts have consistently imposed

Sentencing alternatives, as opposed to exceptional sentences, in cases with circumstances far more egregious than Mr. Lugliani's.
SEE ATTACHMENT(S).

Moreover, Mr. Lugliani's exceptional sentence also does not promote respect for the law by providing punishment which is just; protect the public; offer Mr. Lugliani, a first time offender, an opportunity to improve himself; make frugal use of the State's and local governments' resources; and reduce the risk of his reoffending. Instead, it promotes the "individual sentencing philosophy of a given judge." Hortman, 78 Wn. App. 44 463.

Accordingly, based on the facts of this case and the SRA's stated purposes, this court should hold that Mr. Lugliani's exceptional sentence is clearly excessive because it violated the real facts doctrine and fails to comport with the SRA's purposes.

IV CONCLUSION

For the foregoing reasons, this court should reverse Mr. Lugliani's exceptional sentence and remand for re-sentencing within the standard range and also meaningful consideration of a SSOSA.

DATED: November 20th, 2019

Respectfully Submitted,
x Mark Lugliani
Mark Lugliani
Appellant, Pro Se

ATTACHMENT

- State v. Gray, 2019 Wash. App. LEXIS 1193 (1st degree child rape, 2 counts, sentenced to 131 months to life, suspend all but 6 months and granted SSOSA).
- State v. Bell, 2019 Wash. App. LEXIS 739 (2nd degree child rape, sentenced to 90 months to life, suspend all but 8 months, granted SSOSA).
- State v. Novikoff, 2018 Wash. App. LEXIS 497 (1st degree child rape, 3 counts + D.V., sentenced to 130 months to life, suspend all but 12 months, granted SSOSA).
- State v. King, 2017 Wash. App. LEXIS 2197 (1st degree child rape, sentenced to 96 months to life, suspend all 9 months, granted SSOSA).
- State v. Wilson, 2017 Wash. App. LEXIS 1303 (2nd degree child rape, sentenced to 102 months, suspend all, granted SSOSA).
- State v. Lane, 2017 Wash. App. LEXIS 46 (1st degree child molestation and witness tampering, 2 counts, sentenced to 82 months to life, suspend all but 6 months, granted SSOSA).
- State v. Free, 2017 Wash. App. LEXIS 2281 (1st degree child rape, 2 counts, sentenced to 131 months to life, suspend all but 11 months, granted SSOSA).
- State v. Smith, 2016 Wash. App. LEXIS 2778 (1st degree child rape and 1st degree child molestation, 2 counts, sentenced to 130 months, suspend all but 9 months, granted SSOSA).
- State v. Countryman, 2016 Wash. App. LEXIS 56 (1st degree child rape, sentenced to 123 months, suspend all, granted SSOSA).

ATTACHMENT continued

- State v. Detwiler, 2016 Wash. App. LEXIS 1139 (1st degree Child Rape, sentenced to 131.9 months to life, suspend all but 12 months, granted 5505A).
- State v. Westra, 2014 Wash. App. LEXIS 1953 (1st degree child molestation, 2 counts, sentenced to 89 months to life, suspend all but 6 months, granted 5505A).
- State v. Mathison, 2014 Wash. App. LEXIS 112 (1st degree Child rape, 2 counts, sentenced to 131 months, suspend all but 12 months, granted 5505A).
- State v. Bernarde, 2014 Wash. App. LEXIS 2850 (2nd degree child molestation, 7 counts, sentenced to 116 months, suspend all but 6 months, granted 5505A).
- State v. Miller, 2014 180 Wn. App. 413 (1st degree child rape, sentenced to 93 months to life, suspend all but 12 months, granted 5505A).
- State v. Miller, 2011 159 Wn. App. 911 (1st degree child rape, sentenced to 93 to 123 months, suspend all, granted 5505A).
- State v. Strenge, 2011 Wash. App. LEXIS (2nd degree child rape, sentenced to 102 months to life, suspend all, granted 5505A).
- State v. Pannell, 2011 173 Wn. 2d. 222 (2nd degree child molestation, 4 counts, sentenced to 116 months, suspend all, granted 5505A).
- State v. Malm, 2010 Wash. App. LEXIS 437 (2nd degree child molestation, 2 counts, sentenced to 82 months, suspend all, granted 5505A).
- State v. Marshall, 2010 Wash. App. LEXIS 246 (1st degree child rape, 2 counts, sentenced to 131 months, suspend all, granted 5505A).

ATTACHMENT continued

- State v. Adams, 2010 Wash. App. LEXIS 135 (1st degree child rape, 2 counts, sentenced to 125 months, suspend all but 6 months, granted 5505A).
- State v. Tavai, 2009 Wash. App. LEXIS 3182 (2nd degree child rape, sentenced to 125 months to life, suspend all but 9 months, granted 5505A).
- State v. Peterson, 2008 Wash. App. LEXIS 635 (1st degree child molestation, sentenced to 68 months, suspend all but 6 months, 5505A).
- State v. Miceli, 2008 Wash. App. LEXIS 3 (1st degree child rape, 2 counts, sentenced to 130 months, suspend all, granted 5505A).
- State v. Wager, 2006 Wash. App. LEXIS 1520 (1st degree child rape, sentenced to 123 months, suspend all, granted 5505A).
- State v. Canfield, 2006 Wash. App. LEXIS 2361 (1st degree child molestation, 2 counts, sentenced to 89 months, granted 5505A).
- State v. Nelson, 2004 Wash. App. LEXIS 77 (2nd degree child rape, sentenced to 102 months, suspend all, granted 5505A).
- State v. Davis, 2002 Wash. App. LEXIS 2002 (1st degree child rape, sentenced to 123 months, suspend all but 6 months, granted 5505A).
- State v. Ardelean, 2001 Wash. App. LEXIS 2487 (1st degree child molestation, sentenced to 68 months, suspend all, granted 5505A).
- State v. Jaime, 2002 Wash. App. LEXIS 2746 (1st degree child rape, sentenced to 123 months, suspend all but 6 months, 5505A).

DECLARATION OF MAILING

I, (name) Mark Lugliani, declare that, on the 21st day of (month) November, 2019, I placed the foregoing (name of motion[s] and/or papers) Statement of Additional Grounds for Review and Declaration of mailing

_____, or copy thereof, in the internal legal mail system of the (name of institution) Airway Heights Correction Center Corrections Center, with appropriate postage, addressed to:

(list all addresses):

- ① Court of Appeals 950 Broadway, STE 300, MSTB-06
Division Two Tacoma, Wa. 98402-4452
of the STATE of Washington
- ② Clark County Prosecutor's office
P.O. BOX 5000, Vancouver, Wa. 98666-5000
- ③ Catherine E. GLINSKI
c/o GLINSKI Law Firm PLLC
P.O. BOX 761
Manchester, Wa. 98353

I swear in accordance with the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 21st day of (month) November, 2019.

Mark Lugliani
(signature)

MARK Lugliani #413801, K-A38U
(printed name/address)

Airway Heights Correction Center
P.O. Box 2049
Airway Heights, Wa. 98001